

§ 201.22 Credit requirements for borrowers.

(a) *Credit application and review.* (1) Before making a loan insured under this part, the lender shall exercise prudence and diligence to determine whether the borrower and any co-maker or co-signer is solvent and an acceptable credit risk, with a reasonable ability to make payments on the loan obligation. All documentation supporting this determination and relating to the lender's review of the credit of the borrower and of any co-maker or co-signer shall be retained in the loan file.

(2) The lender shall obtain a separate dated credit application on a HUD-approved form, executed by the borrower and any co-maker or co-signer under applicable criminal and civil penalties for fraud and misrepresentation, for each loan made. The lender shall verify that the borrower's Social Security Number is valid, through such documentation as may be prescribed by the Secretary.

(3) The lender shall conduct a credit investigation based on the credit application, and shall obtain written verification of or otherwise document the current employment and current income of the borrower and any co-maker or co-signer. If the borrower or any co-maker or co-signer has changed employment within the past two years, the lender shall obtain written verification of or otherwise document the person's prior employment and prior income during the two-year period. If the borrower or any co-maker or co-signer was self-employed during any period of the previous two years, the lender shall obtain documentation of the person's income during such period of self-employment.

(4) The lender shall also determine the total amount of the borrower's existing and proposed title I loans to ensure that the loan amounts in § 201.10 are not exceeded.

(5) As part of its credit investigation, the lender shall obtain a consumer credit report stating the credit accounts and payment history of the borrower and of any co-maker or co-signer. Subject to state or local law, the lender shall check with the inquirers concerning all credit inquiries reported

within the previous 90 days to determine whether the borrower or the co-maker or co-signer has incurred debts not listed on the credit application. If a consumer credit report is not available or is incomplete, the loan file shall contain other documentation of the lender's diligent investigation of the credit of the borrower or of the co-maker or co-signer.

(6) If the consumer credit report does not contain the necessary information, the lender shall obtain written verification that the borrower is not over 30 days delinquent on any senior mortgages or deeds of trust on the property being improved with a property improvement loan.

(7) The lender shall verify, in such manner as the Secretary may prescribe, whether the borrower is in default or a claim has been paid in connection with any loan obligation owed to or insured or guaranteed by the Federal Government.

(8) For any loan with a total principal balance in excess of \$5,000, the lender shall obtain written verification of the source of all funds of the borrower required for the borrower's initial payment, if such payment will be in excess of five percent of the loan.

(9) Before making a final determination on the creditworthiness of the borrower, the lender shall conduct a face-to-face or telephone interview with the borrower and any co-maker or co-signer to resolve any discrepancies in the information on the credit application and to assure that the information is accurate and complete.

(10) After a thorough credit investigation and in the absence of information to the contrary, the lender may rely upon all statements of fact made by the borrower or any co-maker or co-signer in a credit application.

(b) *Income requirements.* (1) For any Title I loan, the credit application and review must establish that the borrower's income will be adequate to meet the periodic payments required by the loan, as well as the borrower's other housing expenses and recurring charges. For a borrower's income to be considered adequate, housing expenses and total fixed expenses generally may not exceed maximum percentages of effective gross income established by the

§ 201.23

24 CFR Ch. II (4–1–13 Edition)

Secretary. If these expense-to-income ratios are exceeded, the borrower's income may be considered adequate only if the lender determines and documents in the loan file the existence of compensating factors concerning the borrower's creditworthiness that support approval of the loan.

(2) In determining whether the borrower's income is adequate, the following definitions are applicable:

(i) *Effective gross income* is defined as continuing income from all sources that is reasonably expected to be available during the first two years of the loan obligation, without any deduction for income taxes or other items.

(ii) *Total fixed expenses* is the sum of the borrower's housing expenses and other recurring charges.

(iii) *Housing expenses* includes all payments for principal, interest, loan or mortgage insurance charges, ground rent or leasehold charges, real estate taxes, hazard insurance, and homeowners association or condominium fees, but does not include utility costs.

(iv) *Other recurring charges* include all payments on automobile loans, furniture loans, student loans, installment loans, revolving charge accounts, alimony or child support, and any other debt for which the obligation is expected to continue for six months or more.

(c) *Evidence of delinquency, default or misrepresentation.* Except with the prior approval of the Secretary the lender shall not approve a loan if the lender has knowledge of any of the following circumstances:

(1) The borrower is past due more than 30 days as to the payment of principal or interest under the original terms of a loan obligation owed to or insured or guaranteed by the Federal Government, unless the debt has since been discharged or satisfied; or

(2) The borrower has previously made material misstatements of fact on applications for loans or other assistance.

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§ 201.23 Borrower's initial payment.

(a) *General requirement.* The borrower shall be responsible for the payment in cash of any costs that will not be paid, or are not eligible to be paid, from the proceeds of the loan. Such costs payable by the borrower may include any required downpayment, any discount points to be paid by the borrower to the lender, any other fees and charges that may not be financed, and any other costs in excess of the loan amount. No part of such costs payable by the borrower may be loaned, advanced, or paid to or for the benefit of the borrower by the dealer, the manufacturer, or any other party to the loan transaction. If the borrower obtains all or any part of such costs through a gift or a loan from some other source, the borrower must disclose the source of such gift or loan on the credit application. Any such loan must be secured by property or collateral owned by the borrower independently of the property securing repayment of the Title I loan, unless the prior approval of the Secretary is obtained for an exception to this requirement. The lender shall consider any such loan obligation in performing the credit investigation. Documentation of any initial payment shall be retained by the lender in the loan file.

(b) *Manufactured home purchase loans.* In the case of a manufactured home purchase loan, the borrower shall make a minimum cash downpayment of at least five percent of the purchase price of the home. The borrower's equity in an existing manufactured home and any movable appurtenances may be traded-in on a new home and accepted in lieu of full or partial cash downpayment, but without any cash payment to the borrower. The existing manufactured home being traded-in shall be clearly identified, and the borrower's equity in the home shall be based upon the retail value of the home and appurtenances (as determined by a HUD-approved appraisal), less the total of all loans outstanding on the home and appurtenances.

(c) *Manufactured home lot loans.* In the case of a manufactured home lot loan, the borrower shall make a minimum cash downpayment of at least